EXHIBIT 1

1 DISTRICT JUDGE FRANKLIN D. BURGESS MAGISTRATE JUDGE J. KELLEY ARNOLD 2 3 4 5 6 7 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 8 AT TACOMA 9 KEVIN LEE ESTES, NO. C08-5749FDB/JKA 10 Plaintiff, **DECLARATION OF DEVON SCHRUM** 11 v. 12 WASHINGTON STATE DEPARTMENT OF CORRECTIONS et 13 al., 14 Defendant. 15 I, DEVON SCHRUM, make the following declaration: 16 1. I am the Grievance Program Manager in the Office of Correctional Operations, 17 Washington State Department of Corrections (DOC), located in Tumwater, Washington. My 18 official duties include responding to questions regarding the inmate grievance program 19 statewide, reviewing grievances appealed to Level III, reporting to DOC officials on the status 20 of the grievance program, and other duties related to this program. I have held this position 21 since April, 2006. 22 2. The Washington Offender Grievance Program (OGP) has been in existence 23 since the early 1980's and was implemented on a department-wide basis in 1985. 24 3. Under the OGP, an offender may file a grievance over a wide range of aspects of 25 his/her incarceration. Inmates may file grievances challenging: 1) DOC institution policies,

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rules and procedures; 2) the application of such policies, rules and procedures; 3) the lack of policies, rules or procedures that directly affect the living conditions of the offender; 4) the actions of staff and volunteers; 5) the actions of other offenders; 6) retaliation by staff for filing grievances; and 7) physical plant conditions. An offender may not file a grievance challenging: 1) state or federal law; 2) court actions and decisions; 3) Indeterminate Sentence Review Board actions and decisions; 4) administrative segregation placement or retention; 5) classification/unit team decisions; 6) transfers; 7) disciplinary actions; and several other aspects of incarceration. Administrative segregation, classification, and disciplinary issues are not grievable because these areas have their own appeal process.

- 4. The OGP provides a wide range of remedies available to inmates. These remedies are outlined in OGP 015 and include: 1) restitution of property or funds; 2) correction of records; 3) administrative actions; 4) agreement by department officials to remedy an objectionable condition within a reasonable time; and 5) a change in a local or department policy or procedure.
 - 5. The grievance procedure consists of four levels of review:

Level 0 - Complaint or informal level. The grievance coordinator at the prison receives a written complaint from an offender on an issue about which the offender wishes to pursue a formal grievance. At this complaint level, the grievance coordinator pursues informal resolution, returns the complaint to the offender for rewriting, returns the complaint to the offender requesting additional information, or accepts the complaint and processes it as a formal grievance. Routine and emergency complaints accepted as formal grievances begin at Level I, complaints alleging staff misconduct are initiated at Level II.

<u>Level I</u> - Grievances against policy, procedure, or other offenders, and grievances processed as emergencies. The local grievance coordinator is the respondent at this level.

<u>Level II</u> - Appeal. Offenders may appeal Level I grievances to this level. Staff conduct grievances are initiated at this level. All appeals and initial grievances received at Level II are investigated, with the prison superintendent being the respondent.

<u>Level III</u> - Appeal. Offenders may appeal all Level II responses except emergency grievances to Department headquarters in Turnwater, where they are reinvestigated. Administrators are the respondents.

- 6. Since March 1, 2005, offenders have 20 working days from the date of an incident to file a grievance. Prior to this date, offenders had five working days from the date of an incident to file a grievance. An exception to this filing timeframe is allowed if there is a valid reason for the delay.
- 7. The DOC's grievance system is well known to inmates; currently over 20,000 grievances are filed per year system wide.
- 8. Kevin Estes, DOC #915117, is a DOC inmate currently incarcerated at the McNeil Island Corrections Center (MICC), Minimum Security Unit in Steilacoom, Washington.
- 9. It is my understanding that Mr. Estes' complaint in this case raises a claim that several staff members at the MICC violated Mr. Estes' right of access to the courts by failing to make photocopies of documents he wanted to send to the court and by rejecting some of his outgoing legal mail. It is my understanding that the incidents forming the basis of Mr. Estes' complaint occurred in late November and early December 2008.
- 10. Mr. Estes' complaints about MICC staff failing to make copies of documents and refusing to mail out legal mail are grievable issues under DOC's grievance system.
- 11. I have reviewed DOC's official grievance records concerning Mr. Estes and have determined that he filed grievances against MICC staff asserting that they failed to make copies of legal documents for him and failed to mail out his legal mail, in late November and early December 2008. These grievances were given DOC grievance Nos. 0828479 and 0828815. Grievance No. 0828479 concerns photocopies and has proceeded only to level 2.

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Grievance No. 0828815 concerning outgoing legal mail has proceeded only to level 0. Mr. Estes clearly has not gotten the results and remedies he was seeking in these grievances and the grievances have not been processed through the highest level, level III. As such, official DOC grievance records show that Mr. Estes has not exhausted his prison grievance remedies on his claims in this case.

12. Attached to this declaration as Attachment A are the official DOC records pertaining to Mr. Estes' grievance Nos. 0828479 and 0828815.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this _______ day of March, 2009, at Turnwater, Washington.

DÉVON SCHRUM

LOG I.D. NUMBER	
0828479	



LEVEL 1 - INITIAL GRIEVANCE NIVEL 1 - QUEJA INICIAL

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PART A - INITIAL GRIEVANCE/ PARTE A - QUEJA INICIAL

Response due/Respuesta requierida en

I WANT TO GRIEVE: This is the third re-write pursuant to the Coordinator's deliberate obstruction of WA. State Supreme # 82540-8. Legal photo copying by Counselor McGhee. Being evidence packets containing further evidence of preventing me access to the legal processing of court documents and evidence which is already of record. Thus prejudicing me further. As described in the 2 other attempts using fraudulent procedure and processing under the grievance procedure. In re: # 0828479, Pierce County Superior Court cause # 06-1-0506-3 and Division II 38435 Lakewood Municipal # IN80989 has evidence packets with kites, classification papers, money transfers, postage due forms copied here and at other institutions already introduced. McGhee refuses, thus obstructing, causing me to loose my appeal.

SUGGESTED REMEDY: McGhee write a letter explaining to the courts why he is refusing to do any legal photo copying as my kites to him haven't been responded to, and acknowledging his actions that time barred me thus loosing my cause.

Grievance Coordinator Signature

FIRMA DE COORDINADOR DE QUEJAS

Grievant Signature FIRMA DE QUEJANTE

Date **FECHA**

PART B - LEVEL I RESPONSE / PARTE B RESPUESTA PRIMER NIVEL

Your grievance was investigated by Classification Counselor 3 Erickson who reported that policy requires offenders to make timely photocopy requests in advance of any known court deadline, to allow staff a reasonable time frame. Counselor McGhee had directed you to wait in the unit until he had time to make legal copies. You told the Correctional Unit Supervisor that you were directed to wait in the administration area of the unit, manipulating the situation in your favor. Counselor McGhee sent you back to the unit. He tried to locate you the next morning with negative results.

You did not follow policy. You did not make a timely request for legal copies. You gained access to the administration area by lying to the Correctional Unit Supervisor. This grievance has no merit.

> Grievance Coordinator Signature COOINADOR DE QUEJAS

You may appeal this response by submitting a written appeal to the coordinator within two (2) working days from date this response was received. Ud. puede apelar esta respuesta al someter una apelación por escrito al coordinador dentro de dos (2) días de trabajo de la fecha en que esta respuesta fue recibida.

Distribution:

White-DOC 05-166 E/S (Rev. 9/14/07)

Grievant-Queiante.

Grievance Program Manager-Gerente del Programa de Quejas,

Grievance Coordinator-Coordinador de Queja

Gnevance Coordinator-Coordinador de Quejas, Grievant-Queiante

L0G	I.D.	NUMBER
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APPEAL TO LEVEL II APELACIÓN AL 2DO NIVEL

							
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PART B - LEVEL II RESPONSE / PARTE B RESPUESTA 2DO NIVEL

Your grievance was investigated by Classification Counselor 3 Erickson who reported that According to DOC 590.500 - Legal Access for Offenders, section (VIII) Photocopying (D). (3): Offenders are responsible for making timely photocopy requests, in advance of any known court deadline, to allow staff a reasonable time frame.

Inmate Estes did not follow policy. He did not make a timely request for legal copies, resulting in his own obstruction, causing him to lose his appeal.

SUPERINTENDENT, WORK RELFASE SUPERVISOR, NELD ADMINISTRATOR SIGNATURE SUPERINTENDENTE,

You may appeal this response by submitting a written appeal to the coordinator within two (2) working days from date this response was received.

Ud. puede apelar esta respuesta al someter una apelación por escrito al coordinador dentro de dos (2) días de trabajo de la fecha en que esta respuesta fue recibida.

DOC 05-168 E/S (Rev. 10/2001) POL

1. GRIEVANCE PROGRAM MANAGER - GERENTE DEL PROGRAMA DE QUEJAS

LOG I.D. NUMBER	
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OFFENDER COMPLAINT

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DOC 05-165 (Rev. 01/21/05) OCO / POL 1. GRIEVANCE PROGRAM MANAGER

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OFFENDER COMPLAINT

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DOC 05-165 (Rev. 01/21/05) OCO / POL 1. GRIEVANCE PROGRAM MANAGER

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	STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS
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RESIDENTIAL FACILITIES: Send all completed copies of this form to the Grievance Coordinator. Explain what happened, when, where, and who was involved or which policy/procedure is being grieved. Be as brief as possible but include the necessary facts. A formal grievance begins on the date the typed grievance forms are signed by the coordinator. Contact a staff member to report an emergency situation or to initiate an emergency grievance. Please attempt to resolve all complaints through appropriate staff before initiating a grievance.											
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	It is not a grievable issue.										
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☐ You failed to respond to callout sheet on (See below.) Return within five (5) days or by: ☐ The formal grievance/appeal paperwork is being prepared. ☐ Due Date:											
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Distribution: WHITE-Grievance Program Manager CANARY-Grievance Coordinator DOC 05-165 (Rev. 2/05/07)

PINK-Grievant